HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 214 of 2005
Decided on: 27.6.2007.

Dumnu Ram ..... Petitioner.

Versus

H.P.M.C. .....Respondent.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Acting Chief Justice.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the petitioner: Mr.Deepak Kaushal and Ms.Bhawna Datta, Advocates.

For the respondent: Mr.Shrawan Dogra, Advocate.

Deepak Gupta, A.C.J. (oral):

This writ petition is directed against the order of the learned H.P. State Administrative Tribunal in OA No.1480 of 1992, whereby the prayer made by the petitioner for correction of his date of birth has been rejected.

The brief facts necessary for the disposal of the case are that the petitioner joined the respondent-Corporation as a Driver on daily wages in the year 1975. At that time, he had filed an affidavit in support of his age in which he had given his age to be 26 years which would mean that he was born in 1949. His date of birth, as recorded in the service record, is 2.6.1949. According to the petitioner, he made a representation on 17.1.1977 for

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

correction of his date of birth and when that did not find favour, he made another representation in the year 1991. As far as the representation dated 17.1.1977 is concerned, the learned Tribunal came to the conclusion that in fact no such representation appears to have been made. We have perused the representation dated 17.1.1977 alleged to have been made by the petitioner. The same reads as follows:

> "It is submitted that my date of birth may please be taken into account from the affidavit, medical fitness & panchayat certificate produced by me after my joining this organization. School Certificate will be submitted in due course of time, separately."

A perusal of this representation clearly shows that even in the year 1977, the petitioner had not given any date of birth. He had only stated that his date of birth may be entered by taking into account the affidavit, medical fitness and panchayat certificate produced by him. At that stage, the petitioner did not make any representation to the respondent that he was also known as Gokal Chand. He also did not give the date of birth which he wanted to be changed and the new date of birth which he wanted to be recorded.

16 years after joining the service in the year 1991, the petitioner made a representation in which for the first time he stated that he was also known as Gokal Chand and alongwith the representation, he produced a panchayat certificate issued by the Secretary Gram Panchayat in which it is mentioned that the date of birth of Dumnu alias Gokal Ram is 15.7.1953. As far as the school leaving certificate is concerned, it only bears the name of Gokal Ram and there is no mention of Dumnu Ram. As far as the panchayat certificate is concerned, a perusal of the same shows that in fact the registration of the entry was made on

24.1.1992 itself on which date the certificate was issued. This casts a doubt on the authenticity of the certificate.

Further, we are of the considered view that any government servant who wants correction of his date of birth, as originally entered in the service record, must make the requisite representation for change of his date of birth within the period prescribed by the employer. In case no period is prescribed, then also the representation must be made within a reasonable time. As far as the representation made in the year 1977 is concerned, it is very doubtful whether any such representation was made. This representation does not bear the stamp of any office of the respondent-Corporation. It bears only signatures of a person who is alleged to have been working at the relevant time as P.A. to the Managing Director of the respondent-Corporation. This fact has also not been proved. The respondent has categorically denied before the Tribunal that this representation was ever received. In fact this representation is no representation for correction of date of birth since in this representation, there is no mention of the date of birth which the petitioner wants to be entered in his favour. Secondly, if this representation had been made in 1977, why did the petitioner remain silent from 1977 till 1991? No explanation in this regard is forthcoming.

The instructions in this behalf issued by the Government of Himachal Pradesh are absolutely clear. A reference to these instructions as exist at the time when the petitioner entered service clearly shows that the request with regard to the change of date of birth of an employee in government service record must be made within five years of entering into Government service. Now the prescribed period stands reduced to two years. It is by now well settled by the apex Court that a request or application for change of the date of birth

must be made by the employee within the period so prescribed and no such application can be entertained at a later stage. Reference in this behalf may be made to the judgment of the apex Court in **State of Gujarat and Ors.** Vs. **Vali Mohmed Dasabhai Sindhi, JT 2006 (6) SC 468**, wherein the apex Court held as follows:

> "An application for correction of the date of birth should not be dealt with by the courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him, in seniority waiting for their promotion, may loose the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books."

A perusal of the aforesaid law as laid down by the apex court clearly shows that the request for change of the date of birth must be made within the time prescribed by the rules or if such time is not prescribed by the rules, then

such application must be made within a reasonable time. In the present case the rules prescribe that such request must be made within 2 years or at the most 5 years of joining service. The request made after 16 years of joining service can never be said to be a request made within a reasonable time under any circumstances.

The apex court has clearly laid down that the change in the date of birth of an employee not only affects the employee concerned but it may adversely affect the rights of other employees who are the colleagues or juniors of the person who applies for correction of his date of birth. For this reason, it is imperative that the request for change of date of birth should be made at the earliest stage.

In view of the above discussion, we find that the representation filed by the petitioner in the year 1991 was highly belated and the Tribunal has rightly rejected the original application of the petitioner. Even on merits, we are doubtful that any reliance can be placed on the school leaving certificate which is in the name of Gokal Ram or on the panchayat certificate issued by the Panchayat Secretary which does not appear to be authentic. The writ petition is accordingly dismissed.

CMP No.1539 of 2007:

In view of the dismissal of the writ petition, this application is also dismissed.

(Deepak Gupta), ACJ.

(V.K. Ahuja), J.

June 27, 2007. (trs)